Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Service ("ALTS") hereby submits these comments on the *Notice of Proposed Rulemaking* issued by the Federal Communications Commission in the above-captioned proceedings in response to a proposal submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS").[1] ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs").

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1 *Access Charge Reform, Price Cap Performance for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* CC Dockets No. 99-262, 94-1, 99-249, and 96-45, Notice of Proposed Rulemaking (FCC 99-235, released Sept. 15, 1999) ("*Notice*").

I. INTRODUCTION

ALTS commends CALLS for taking the initiative and attempting to drive an industry consensus in addressing access reform, and thanks the Commission for promptly seeking public comment on the CALLS proposal. However, ALTS opposes CALLS' request that its plan be adopted by the Commission without modification as an integrated package.[2] The Commission should refuse to adopt the "package" with which it was presented, but build upon the good aspects of the proposal and discard the unsound, anti-competitive ones. ALTS addresses some of the more obvious flaws in these comments.

The Commission should not allow Universal Service programs to serve as a "make whole" remedy that guarantees ILEC revenues. Nor should the Commission accept the proposal to recover an additional 25% of local switching costs through a flat-rated end user charge. On the positive side, CALLS has made a valuable contribution by acknowledging that subscriber line charges should not be geographically deaveraged unless they are aligned with geographically deaveraged rates for unbundled network elements ("UNEs").

II. THE COMMISSION SHOULD ADDRESS THE X-FACTOR AND UNIVERSAL SERVICE SUBSIDY REQUIREMENTS IN SEPARATE PROCEEDINGS, NOT AS PART OF A PACKAGE DEAL WITH CALLS

The CALLS proposal is revenue-neutral to the extent that it assumes that ILEC revenues subject to price caps will continue to be subject to annual productivity

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2 *Notice* at ¶2.

adjustments of 6.5 percent ("the X-factor).[3] ALTS does not necessarily object to this aspect of the CALLS proposal, believing that any necessary adjustments to the X-factor can appropriately be addressed in separate proceedings addressing that issue. However, CALLS has also proposed to transfer $650 million of annual revenue recovery from price-capped rates to a special universal service subsidy for big ILECs, to be frozen at that level for five years.[4] It justifies this level of funding on the ground that it is necessary to replace "implicit support currently embedded in interstate access charge rates and rate structures of price cap LECs."[5]

In this aspect the CALLS proposal seeks to revisit the years of analysis that the Commission has invested in the development of its Universal Service Synthesis Cost Model ("Synthesis Model"). These additional Universal Service subsidies certainly raise the question of whether there would be an unreasonably large federal fund that would violate the principle that the fund should be no more than that which is sufficient to satisfy the Universal Service goals.

These additional funds also create a heightened danger of discriminatory pricing that will be an inevitable consequence of any government subsidy program for the ILECs, whatever merits that program might have in other respects. As local service competitors, ALTS' members are concerned by the prospect of ILECs being allowed to set fire sale prices wherever ILECs are exposed to competition and make up the

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3 The proposal assumes that price-capped ILECs will continue making annual "X-factor" efficiency pricing adjustments equal to 6.5 percent, as already required by Commission rules. Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan, filed Aug. 20, 1999 ("CALLS Memorandum") at 10.

4 CALLS Memorandum at 22.

5 *Id.*

difference from the Universal Service Fund. The explicit Universal Service subsidies reflected in the CALLS proposal could provide non-rural ILECs with a guaranteed source of revenues that, for all practical purposes, would be immune to competition. The ILECs would be able to slash their access prices wherever they are threatened with competition, without being forced to pursue corresponding gains in efficiency. And, of course, CLECs would be faced with an increase in their contribution obligations, which could raise barriers to market entry.

To support its $650 million per year subsidy proposal, CALLS relies upon calculations performed by one of its members, AT&T, using the Synthesis Model in conjunction with a preliminary Commission estimate of common inputs issued on June 2, 1999.[6] At the same time, CALLS leaves the door open for its ILEC members to continue to lobby for higher subsidies. In a footnote it states, "Bell Atlantic, BellSouth, GTE, and SBC do not support use of a model to calculate universal service support, and together with Sprint do not join in the citation of AT&T's model-based calculations."[7]

A negotiated deal among a few companies is not the appropriate forum for determining the appropriate level of subsidies that ratepayers should funnel to cash-rich industry behemoths like Bell Atlantic, BellSouth, GTE, and SBC. Given the amount of effort that the Commission and dozens of other participants have invested in an effort to develop an open, transparent model for determining the appropriate level of forward-looking cost support required by non-rural ILECs, and especially given that the

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6 *Id.* at 26.

7 *Id.*

Commission appears to be approaching the end of that process,[8] it would represent a perversion of administrative processes to accept instead a negotiated agreement among a handful of parties.

III. CALLS PROVIDES NO JUSTIFICATION FOR ITS PROPOSAL TO RECOVER AN ADDITIONAL 25 PERCENT OF LOCAL SWITCHING COSTS FROM FLAT-RATED CHARGES RATHER THAN PER-MINUTE CHARGES

In its *Access Charge Reform* proceeding in 1997, the Commission painstakingly evaluated what portions of local and tandem switching can properly be considered non-traffic-sensitive, and established rules providing for all of those costs to be recovered through flat-rated charges.[9] Over and above those amounts, the CALLS proposal would allow ILECs to recover an additional 25 percent of their switching costs from flat-rated end user charges.[10] CALLS makes no effort to demonstrate that additional, as-yet-unidentified switching costs are non-traffic-sensitive. CALLS seeks to justify this proposal by arguing that end-users should be required to pay directly for switched access, rather than through long distance carriers.[11] But the real issue here is whether there is any justification for recouping traffic sensitive costs through a non-traffic sensitive flat rate.

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8 *See Federal-State Joint Board on Universal Service*, Ninth Report & Order & Eighteenth Order on Reconsideration (FCC 99-306, released Nov. 2, 1999) ("*Ninth Report on Universal Service*") (mandating an explicit universal service support subsidy for non-rural ILECs to begin on January 1, 2000).

9 *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges,* CC Dockets No. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982 (1997) ("*Access Charge Reform Order*") at ¶¶123-135, 167-168, 170, 174-175, and 178..

10 CALLS Proposal at 39.

11 *Id.*

As the Commission has recognized many times,[12] cost recovery for dominant carriers should be structured in a way that mirrors the structure and causation of the underlying costs. If the Commission allowed ILECs to recover traffic-sensitive switching costs on a flat-rated basis, it would, in effect, be inviting them to offer switching services to high-volume users at below-cost rates, while making up the difference by overcharging low-volume users. This would result in inefficiencies and opportunities for anti-competitive cross-subsidies by the ILECs and would limit the ability of CLECs to provide competitive switching services. In addition, such a change would have an immediate adverse effect upon residential and small business users. Unless and until the Commission finds that the underlying costs involved are non-traffic-sensitive, it should continue to require that the recovery of such costs by dominant carriers also be on a traffic-sensitive basis, i.e. on a per minute basis.[13]

Concerning the question of whether or not end users, as opposed to IXCs, should be required to pay for access charges directly, the short answer is that there is no rule that prevents that from happening today. The Commission rules dos not prohibit IXCs from offering interexchange services that begin and end at IXC points-of-presence ("POPs"). In fact many large business users today choose their own access providers.

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12 *See, e.g., Access Charge Reform Order* at ¶165 ("We have long recognized that non-cost based rate structures can, among other dangers, (1) threaten the long-term viability of the nations's telephone systems; (2) distort the decision whether to use alternative telecommunications technologies; and (3) encourage 'uneconomic bypass' of the public switched telecommunications network, raising rates for all.").

13 In fact, the Commission is currently considering whether to change or eliminate the rate stucture requirements for the switching element and comments on the proposals were submitted to the Commission in that proceeding just two weeks ago. See Fifth Report and Order and Further Notice of Proposed Rulemaking in CC Dkt nos. 96-262, 94-1 (Aug. 27, 1999). It would be seriously premature to accept the CALLS proposal when the Commission has not even considered those comments.

For other customers IXCs typically make the necessary access arrangements on their behalf because those customers welcome that convenience. The Commission should not force those consumers to give up that convenience.

IV. CALLS HAS PROPOSED WORTHWHILE SAFEGUARDS AGAINST THE HEIGHTENED DANGER OF ANTICOMPETITIVE PRICING FROM ILECS ARMED WITH GOVERNMENT-MANDATED SUBSIDIES, BUT THE COMMISSION SHOULD EXPAND UPON THOSE SAFEGUARDS.

As noted above, any universal service subsidy for non-rural ILECs presents some danger of discriminatory pricing by the ILEC and the shielding of the ILECs from competition. While the subsidies should be no more than that which is "sufficient" to ensure the universal service goals and should be available to all carriers, it is clear that those goals have not yet been met and, in fact, the subsidies to date have flowed only to the ILECs,[14] giving them an increased ability to engage in discriminatory pricing.

CALLS has proposed a worthwhile safeguard against discriminatory ILEC pricing. The Commission should adopt and strengthen this safeguard. ALTS commends the CALLS members for recognizing that ILECs should not be permitted to deaverage subscriber line charges ("SLCs") geographically until they geographically deaverage the rates that they charge for unbundled loops and perhaps (the plan is not clear) other UNEs as well.[15] CALLS proposed the adoption of a rule that, "All geographic deaveraging of

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[14] The experience of Western Wireless in attempting to gain ETC status shows how difficult it has been for CLECs to become eligible for universal service. See Petition for Preemption filed by Western Wireless, CC dkt no. 96-45 (filed June 23, 1999).

[15] *See* CALLS Memorandum at 9. *See* Section 2.1.5.1 of the CALLS plan, quoted immediately below.

SLCs by customer class must be done according to UNE zones. If a state has not created geographically deaveraged UNE rates for loops, the incumbent LEC may not deaverage its SLCs in that state."[16]

The Commission should adopt this recommendation whether or not it accepts other aspects of the CALLS proposal. If ILECs could reduce SLCs for customers in urban areas while maintaining high averaged loop rates for CLECs, they would create a price squeeze that would prevent CLECs from reducing their own SLCs or equivalent charges. This would create a grossly unfair pricing advantage for ILECs.

Section 51.507(f) of the Commission's Rules requires each state commission to establish at least three geographic rate zones for UNEs and interconnection that reflect cost differences; however, the Commission has stayed the effectiveness of that rule until May 2, 2000.[17] Even when implemented, that rule would not necessarily prevent ILECs from setting more rate zones for SLCs than they set for UNEs, or for establishing zones with differing boundaries. The CALLS recommendation for deaveraged SLCs would address those deficiencies by requiring that ILEC rate zones for access service and its rate zones for UNEs be coterminous. That recommendation is worthy of adoption on its own merits, The Commission should not stop there, however. The Commission must not limit its freedom to address other related problems that are

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16 CALLS Memorandum, Appendix B at 7, §2.1.5.1. CALLS does not explain why this section appears to make UNE loop deaveraging a prerequisite for SLC deaveraging but does not clearly state whether or not deaveraging of other UNE rates would be a prerequisite.

17 The Commission stayed section 51.507(f) until six months following its release of an order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural ILECs. That order was released on November 2, 1999. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deaveraged Rate Zones for Unbundled Network Elements,* Stay Order, CC Docket No. 96-98, 14 FCC Rcd 8300 (1999); *Ninth Report on Universal Service, supra.*

likely to arise in the implementation process, and should otherwise preserve its flexibility to react to changes in market conditions, technology, and business practices. Making UNE and access rate zones coterminous will be a good start but will not by itself prevent the ILECs from applying prices designed to discourage competition. The most obvious tactic for an ILEC would be to minimize the spread between access prices and UNE prices in places that are subject to competition, while maximizing the spread and collecting excess profits in places where CLECs do not provide a significant competitive alternative.

Coterminous rate zones will be of little avail if percentage discounts applied by ILECs to UNE rates fall short of the discounts applied to access rates. If access rates in a given zone are 50 percent below the access rates that an ILEC offers in its highest-priced zone, UNE prices should reflect the same ratio. UNE rates should also benefit from the same kinds of volume discounts that ILECs apply to access services, on a zone-by-zone basis.

CALLS is right to recognize that its core proposals will generate a need for additional protection against anti-competitive activities by the ILECs. The one safeguard that CALLS recommends is a step in the right direction but does not go far enough.

V. CONCLUSION

For all the foregoing reasons, ALTS urges the Commission to reject CALLS' request that its proposal be adopted without modification as an integrated package. Specifically the Commission should reject CALLS' proposal to allow ILECs to recover traffic-sensitive costs through flat-rated charges and should reject any attempt to use Universal Service funds as a "make whole" for the ILECs. The Commission should, however, adopt CALLS' proposal to prevent ILECs from deaveraging SLC charges until they offer concomitant deaveraging of the rates that they charge competitors for UNEs and interconnection.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Association for Local Telecommunications Services was served November 12,1999, on the following persons by first-class mail or by hand service, as indicated.

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